

Dated: November 5, 1990.

Approved:

J.E. Gordon,

Rear Admiral, JAGC, U.S. Navy Judge  
Advocate General.

[FR Doc. 90-27380 Filed 11-20-90; 8:45 am]

BILLING CODE 3810-AE-M

## DEPARTMENT OF TRANSPORTATION

### Saint Lawrence Seaway Development Corporation

#### 33 CFR Part 401

#### Seaway Regulations and Rules: Miscellaneous Amendments

**AGENCY:** Saint Lawrence Seaway Development Corporation, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Authority of Canada publish joint Seaway Regulations and Rules. As a result of discussions with the Authority, it has been determined that a number of existing regulations need clarification. In addition, certain amendments are being made to meet existing conditions, such as permanent change in the tie-up side at Lock 2 of the Welland Canal, or to permit realistic flexibility in Seaway operations, such as allowing, with Authority or Corporation approval, the transit of vessels of greater dimensions than currently permitted. The Corporation and the Authority also are establishing a lower fee for tolls security deposits for vessels with a good payment record over a period of five years.

**EFFECTIVE DATE:** November 21, 1990.

**FOR FURTHER INFORMATION CONTACT:**

Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-0091.

**SUPPLEMENTARY INFORMATION:** As a result of discussions with the Authority, the Saint Lawrence Seaway Development Corporation is amending the Seaway Regulations and Rules as described in the following summary.

The first paragraph in § 401.12(a), is amended to make it clear that mooring lines are to be available for securing on either side of a vessel.

Section 401.19 (a) and (b)(2) is amended to include the popular names of the applicable Canadian and United States laws.

In § 401.22(a), the word "weight" is being replaced by the word "displacement", which is the more appropriate term for reference to a vessel.

The references to Canadian financial entities in § 401.26 (a)(2) and (4) is amended to reflect changes to the Canadian Bank Act.

Present § 401.26(d) is redesignated as § 401.26(e) and a new § 401.26(d) is added to reduce the security for tolls required for a number of precleared vessels owned and controlled by the same individual or company and having the same representative if the individual, company, or representative has paid every toll account in the preceding five years in a timely fashion. The amount is reduced from \$2.55 per ton of the aggregate maximum tonnage of vessels within the Seaway at any one time to \$1.50 per ton for the aggregate gross registered tonnage of the precleared vessels.

Section 401.28(a) is amended to add a reference to § 401.27 to make it clear that the vessel traffic controller or any other officer will provide the instructions on what will be the appropriate speed in the conditions described in § 401.28(a). A new § 401.28(b) is added to clarify that when the Corporation or the Authority designates speeds less than the maximum set out in Schedule II, this will be transmitted as transit instructions under § 401.27. Current paragraphs 401.28 (b) and (c) are being redesignated (c) and (d) respectively.

Section 401.33 is amended to change the reference to § 401.3(d) to § 401.3 because vessels with dimensions other than any of those described in § 401.3 as a whole, not just other than those described in subsection (d), may be allowed transit with the Corporation's or the Authority's approval.

Section 401.31(a) is amended to change the reference to the applicable United States source of the rules for vessels meeting and passing to read "the Inland Rules of the United States. In § 401.33, the reference to paragraph (d) of § 401.3 is deleted. Since it is possible to allow transit of vessels of greater dimensions than those permitted under present paragraph (d), the amendment allows this with the approval of the Authority and the Corporation.

Section 401.42(a) is amended to add a new requirement for passing hand lines which now is necessary for upbound vessels at Locks 4 and 5 of the Welland Canal.

The Welland Canal Lock 2 table in § 401.43 is amended to reflect a permanent change to the tie-up side of Lock 2 to starboard for upbound vessels and to port for downbound vessels.

In § 401.61, the descriptions of the designated areas for assigned frequencies 156.7 MHz, 156.65 MHz,

156.6 MHz, and 156.55 MHz is amended to more accurately describe them.

A new § 401.65(c) is added to require specific information on destination, departure, and the nature of the cargo for departing a port, dock, or anchorage for the system if it is carrying manifested dangerous cargo.

Section 401.68(c) is amended to specifically cite the relevant Canadian and United States laws applicable to Seaway Explosives Permits.

Section 401.73 is amended to delete the word "cargo" before the word "tanks" in order to clarify that this rule concerning cleaning tanks is applicable to slop tanks, which are not cargo tanks.

Section 401.91 is amended for syntactic purposes, with no effect upon its substance.

Schedule III, Calling-In-Table, is amended to require additional message content information under items 19 and 29 for vessels proceeding through the Welland Canal and to eliminate redundant transit information under items 21 and 30. In addition, a new item 55 is added to require call-in information from vessels departing docks and harbors between mid-lake Ontario and Long Point to aid in transit planning and traffic information.

Two parties commented in response to the March 7, 1989, Notice of Proposed Rulemaking. The United States Coast Guard (USCG) and the Lake Carriers Association (LCA). Their comments were given full consideration in formulating this final rule. LCA also commented on that paragraph (a) and its reference to § 401.27 concerning compliance with instructions from Seaway vessel traffic controllers. The LCA posed that masters and pilots are best suited to determine what speed is necessary under existing conditions and, consequently, the vessel traffic controllers should only offer advice on appropriate speeds sparingly. The Authority and the Corporation want to assure the LCA that they do not intend that vessel traffic controllers direct what precise speed is necessary under all conditions; however, there will be circumstances when general speed directions from the controllers will be necessary, such as directions to the trailing vessel to slow when two vessels are approaching a lock within proximity to each other or when a vessel is exceeding the applicable speed limits. Both the United States Coast Guard and the Lake Carriers Association (LCA) commented that the proposal to amend paragraph (a) of § 401.31, which addresses vessels meeting and passing, to cite the International Regulations for Prevention of Collisions at Sea was

confusing and could be interpreted to be at variance with proper practice, which is to apply the inland rules. Part of the confusion arose from the inadvertent omission in the Notice of Proposed Rulemaking of the phrase "—Inland Rules" following the citation of the International Rules. Accordingly and at the advise of both commentators, the rule will now cite "the Collision Regulations of Canada and the Inland Rules of the United States." The second Privy Council recommendation is to change the beginning of § 401.33 to read, "The representative of a vessel shall apply for special instructions from the Corporation and the Authority." This will clearly state who is responsible for applying for special instructions.

In addition, certain changes were recommended by the Privy Council of Canada. A number of minor, non-substantive editorial changes have been made at the request of the Council. Also at the Council's suggestion, a new § 401.28(b) is added to clarify how Corporation or Authority designation of speeds less than the maximum under Schedule II will be transmitted and § 401.91 has been amended for purely syntactic purposes.

Because of an objection raised by the Privy Council, the proposed amendment to § 401.68 adding a paragraph (b) allowing the carriage of explosives quantities above the maximum now permitted is not being adopted at this time. Nevertheless, the Corporation and the Authority will reconsider it for possible future promulgation in the proposed form or otherwise. Based upon comments from the USCG, LCA, and the Privy Council, the C.I.P. and Check Point column of the Calling-In-Table under new Item 55 is being changed, for the sake of clarity, to read, "Vessels departing from ports between mid-Lake Ontario and Long Point, except vessels westbound from a Lake Erie Port and not transiting the Welland Canal." Finally, the requirement in that new Item 55 that destination be reported is required only for vessels proceeding through the Welland Canal and the table entry is corrected accordingly.

#### Regulatory Evaluation

This regulation involves a foreign affairs function of the United States, and therefore, Executive Order 12291 does not apply. This regulation has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the regulation is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

#### Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Regulations relate to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne by foreign vessels.

#### Environmental Impact

This regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of human environment.

#### List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation amends Part 401—Seaway Regulations and Rules (33 CFR part 401) as follows:

#### PART 401—AMENDED

1. The authority citation for 33 CFR part 401 is revised to read as follows:

Authority: 68 Stat. 93, 33 U.S.C. 981–990, as amended; sec. 104, Pub. L. 92–340, 86 Stat. 424; 49 CFR 1.52.

2. In § 401.12, paragraph (a) introductory text is revised to read as follows:

#### § 401.12 Minimum requirements—mooring lines and fairleads.

(a) Minimum requirements in respect of mooring lines, which shall be available for securing on either side of the vessel, winches, and the location of fairleads on vessels are as follows:

\* \* \* \* \*

3. In § 401.19, paragraphs (a), (b)(1), and (b)(2) are revised to read as follows:

#### § 401.19 Disposal and discharge systems.

(a) Every vessel not equipped with containers for ordure shall be equipped with a sewage disposal system enabling compliance with the Garbage Pollution Prevention Regulations of Canada, the Great Lakes Seaway Pollution Prevention Regulations of Canada, the Clean Water Act of 1977 of the United States, and the River and Harbor Act of the United States.

(b) Garbage on a vessel shall be:

(1) Destroyed by means of an incinerator or other garbage disposal device; or

(2) Retained on board in covered, leakproof containers, until such time as it can be disposed of in accordance with the provisions of the Garbage Pollution Prevention Regulations of Canada, the Great Lakes Sewage Pollution Prevention Regulations of Canada, the Clean Water Act of 1977 of the United States, and the River and Harbor Act of the United States.

\* \* \* \* \*

4. In § 401.22, paragraph (a) is revised to read as follows:

#### § 401.22 Preclearance of vessels.

(a) No vessel, other than a pleasure craft of 317.5 tonnes or less in displacement, shall transit until an application for preclearance has been made, pursuant to § 401.24 of this part, to the Corporation or the Authority by the vessel's representative and the application has been approved by the Corporation or the Authority pursuant to § 401.25 of this part.

\* \* \* \* \*

5. In § 401.26, paragraphs (a)(2) and (a)(4) are revised to read as follows:

#### § 401.26 Security for tolls.

(a) \* \* \*

(2) A deposit of money to the credit of the Corporation or the Authority with a bank in the United States or a member of the Canadian Payments Association, a corporation established by section 3 of the Canadian Payments Association Act, or a local cooperative credit society that is a member of a central cooperative credit society having membership in the Canadian Payments Association;

\* \* \* \* \*

(4) Furnishing to the Corporation or the Authority a letter of guarantee given by an institution referred to in paragraph (a)(2) of this section.

\* \* \* \* \*

6. Section 401.26 is further amended by redesignating the current paragraph (d) as (e) and by adding a new paragraph (d) to read as follows:

#### § 401.26 Security for tolls.

\* \* \* \* \*

(d) Notwithstanding paragraphs (b), (c), and (e) of this section, where a number of vessels for each of which a preclearance application has been approved, are owned or controlled by the same individual or company and have the same representative, the security for tolls may be provided in an amount equal to \$1.50 per tonne for the aggregate gross registered tonnage of the

vessels if the individual, company or representative has paid every toll account received in the preceding five years within the time set out in § 401.75 of this part.

(e) \* \* \*

7. In § 401.28, paragraph (a) is revised to read as follows:

**§ 401.28 Speed limits.**

(a) The maximum speed over the bottom for a vessel of more than 12 m in overall length shall be regulated so as not to adversely affect other vessels or shore property, and in no event shall such a vessel proceeding in any area between the place set out in column I of an item of Schedule II and a place set out in column II of that item exceed the speed set out in column III or column IV of that item, whichever is designated by the Corporation and the Authority from time to time pursuant to § 401.27 of this part as being appropriate to existing water levels.

8. Section 401.28 is further amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and by adding a new paragraph (b) to read as follows:

**§ 401.28 Speed limits.**

(b) Where the Corporation or the Authority designates any speed less than the maximum speeds set out in Schedule II of this part, that speed shall be transmitted as transit instructions referred to in § 401.27 of this part.

(c) \* \* \*

(d) \* \* \*

9. In § 401.31, paragraphs (a) and (b) are revised to read as follows:

**§ 401.31 Meeting and passing.**

(a) The meeting and passing of vessels shall be governed by the Collision Regulations of Canada and the Inland Rules of the United States.

(b) No vessel shall meet another vessel within the area between the caution signs at bridges or within any area that is designated as a "no meeting area" by signs erected by the Corporation or the Authority in that area.

10. Section 401.33 is revised to read as follows:

**§ 401.33 Special instructions.**

The representative of a vessel shall apply for special instructions from the

Corporation or the Authority in connection with the intended transit of vessels of unusual design, hulks, sections of vessels, large dredges, vessels in tow and vessels whose limits exceed the requirements of § 401.3 of this part, and such vessels shall not transit except in compliance with such instructions.

11. Section 401.42 is amended by removing the word "and" at the end of paragraph (a)(2), by removing the period at the end of paragraph (a)(3) and replacing it with the words ";and", and by adding a new paragraph (a)(4) to read as follows:

**§ 401.42 Passing hand lines.**

(a) \* \* \*

(4) Upbound vessels in Locks 4 and 5, Welland Canal, in excess of 218 m shall secure the hand line in the eye of No. 1 mooring wire by means of a bowline.

12. In § 401.43, the Welland Canal table is amended by revising column 2 to read as follows:

**§ 401.43 Mooring table.**

\* \* \*

WELLAND CANAL

1	2	3	4	5	6	7	Guard Gate Cut	8
Locks:								
Upbound *****	Starboard		*	*	*	*	*	*
Downbound *****	Port		*	*	*	*	*	*
Tieup walls:								
Upbound *****	Starboard		*	*	*	*	*	*
Downbound *****	Port		*	*	*	*	*	*

13. Section 401.61 is revised to read as follows:

**§ 401.61 Assigned frequencies.**

The Seaway stations operate on the following assigned VHF frequencies:

156.8 MHz (channel 16) Distress and Calling.

156.7 MHz (channel 14) Working (Canadian Stations in Sector 1 and the Welland Canal).

156.65 MHz (channel 13) Working (U.S. Stations in Lake Ontario and Sector 4 of the River).

156.6 MHz (channel 12) Working (U.S. Stations in Sector 2 of the River).

156.55 MHz (channel 11) Working (Canadian Stations in Sector 3, Lake Ontario and Lake Erie).

14. Section 401.65 is amended by adding a new paragraph (c) to read as follows:

**§ 401.65 Communication—ports, docks and anchorages.**

(c) Every vessel shall, upon departing from a port, dock or anchorage, report to the appropriate Seaway station its destination and the expected time of arrival at the next check point and, if carrying manifested dangerous cargo, report the nature, quantity, IMO classification, and stowage location of the manifested dangerous cargo.

15. In § 401.68, paragraph (c) is revised to read as follows:

**§ 401.68 Explosives permit.**

(c) A written application for a Seaway Explosives Permit certifying that the cargo is packed, marked, and stowed in accordance with the Canadian Regulations respecting the Carriage of Dangerous Goods, the United States

Regulations under the Dangerous Cargo Act, and the International Maritime Dangerous Goods Code may be made to the Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662 or to the St. Lawrence Seaway Authority, 202 Pitt Street, Cornwall, Ontario, K6J 3P7.

16. Section 401.73 is revised to read as follows:

**§ 401.73 Cleaning tanks—hazardous cargo vessels.**

Cleaning and gas freeing of tanks shall not take place:

(a) In a canal or a lock;

(b) In an area that is not clear of other vessels or structures; and

(c) Before gas freeing and tank cleaning has been reported to the nearest Seaway station.

17. Section 401.91 is revised to read as follows:

**§ 401.91 Removal of obstructions.**

The Corporation or the Authority may take such action at the owner's expense

as the Corporation or the Authority deems necessary to move any vessel, cargo or thing that, in its opinion, obstructs or hinders transit on any part of the Seaway.

**Schedule III [Amended]**

18. In part 401, subpart A, items 19, 21, 29, and 30 of Schedule III, Calling-in Table, are amended by revising column three, Message content, to read as follows:

**SCHEDULE III—CALLING-IN TABLE**

C.I.P. and checkpoint	Station to call	Message content
19. * * *	* * *	1. Name of Vessel. 2. Location. 3. Manifested dangerous cargo, including: —nature and quantity. —IMO classification. —location where dangerous cargo is stowed. and, if proceeding to Welland Canal, 4. Destination. 5. Drafts, fore and aft. 6. Cargo. 7. Pilot requirement—Lake Erie.
21. * * *	* * *	1. Name of Vessel. 2. Location.
29. * * *	* * *	1. Name of Vessel. 2. Location. 3. ETA C.I.P. 16 or Port. 4. Manifested dangerous cargo, including: —nature and quantity. —IMO classification. —location where dangerous cargo is stowed. and, if proceeding to Welland Canal, 5. Destination. 6. Drafts, fore and aft. 7. Cargo. 8. Pilot requirement—Lake Ontario.
30. * * *	* * *	1. Name of Vessel. 2. Location.

**Schedule III [Amended]**

19. In part 401, subpart A, Schedule III, Calling-in Table, is amended by adding the following new item 55:

**SCHEDULE III—CALLING-IN TABLE**

C.I.P. and checkpoint	Station to call	Message content
<b>Upbound and Downbound Vessels</b>		
55. Vessels departing from ports between mid-lake Ontario and Long Point, except vessels westbound from a Lake Erie port and not transiting the Welland Canal.	Appropriate Seaway station for sector.	1. Name of Vessel. 2. Location. 3. Manifested dangerous cargo: —nature and quantity —IMO classification —location where dangerous cargo is stowed. and if proceeding to Welland Canal, 4. Destination. 5. Drafts, fore and aft. 6. Cargo. 7. Pilot requirement: —Lake Erie if upbound or Lake Ontario if downbound.

Issued at Washington, DC on November 16, 1990.

Saint Lawrence Seaway Development Corporation.

James L. Emery,  
Administrator.

[FR Doc. 90-2736 Filed 11-20-90; 8:45 am]

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## COPYRIGHT ROYALTY TRIBUNAL

### 37 CFR Part 308

[CRT Docket No. 89-5-CRA]

#### Adjustment of the Syndicated Exclusivity Surcharge

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule; correction.

**SUMMARY:** The Tribunal is correcting an error in the wording of the final rule which appeared in the *Federal Register* of August 16, 1990 (55 FR 33604, 33613). Those rules concerned the syndicated exclusivity surcharge which some cable systems have paid since 1983.

**FOR FURTHER INFORMATION CONTACT:** Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., suite 450, Washington, DC 20036 (202-653-5175).

**SUPPLEMENTARY INFORMATION:** On August 16, 1990, the Tribunal issued its final rule adjusting the syndicated exclusivity surcharge. 55 FR 33604, 33613. In the text of the determination and in the final rule, the description of the measurement of the distance between the cable system and the broadcast station was described as the broadcast station being 35 miles from the cable system.

In order to avoid any potential ambiguity in interpreting this distance, the Tribunal is transposing the reference points in the sentence to coordinate with the FCC definition, which refers to the cable system being 35 miles from the broadcast system. This amendment thus clarifies that the FCC definition of actual location point of a broadcast station is incorporated by the Tribunal. This was the original intention of the Tribunal.

Consequently, the Tribunal is correcting the final rule which described the commercial VHF station as being more than 35 miles from the cable system. It is being changed to read "a cable system which is located more than 35 miles from a commercial VHF station."

List of Subjects in 37 CFR Part 308

Cable television, Copyright.

For the reasons set forth in the preamble, the Tribunal amends 37 CFR part 308 as follows:

#### PART 308—ADJUSTMENT OF ROYALTY FEE FOR COMPULSORY LICENSE FOR SECONDARY TRANSMISSION BY CABLE SYSTEM

1. The authority citation for part 308 continues to read as follows:

Authority: 17 U.S.C. 801(b)(2) (A), (C) and (D).

2. Section 308.2(d) introductory text is revised to read as follows:

§ 308.2 Royalty fee for compulsory license for secondary transmission by cable systems.

(d) Commencing with the first semiannual accounting period of 1990 and for each semiannual accounting period thereafter, in the case of a cable system which is located more than 35 miles from a commercial VHF station, but that station places a predicted Grade B contour, in whole or in part, over the cable system, and is not "significantly viewed" or otherwise exempt from the FCC's syndicated exclusivity rules in effect on June 24, 1981, for each distant signal equivalent or fraction thereof represented by the carriage of such commercial VHF station, the royalty rate shall be, in addition to the amount specified in paragraph (a) of this section,

(1) \* \* \*

Dated: November 15, 1990.

J.C. Argetsinger,  
Chairman.

[FR Doc. 90-27367 Filed 11-20-90; 8:45 am]

BILLING CODE 1410-09-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

42 CFR Parts 433, 435, 436, 440, and 447

[MB-014-F]

RIN 0938-AD16

#### Medicaid Program; Eligibility Groups, Coverage, and Conditions of Eligibility; Legislative Changes under OBRA '87, COBRA, and TEFRA

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

**SUMMARY:** This rule amends the Medicaid regulations to incorporate or revise the following mandatory and

optional eligibility groups of individuals for Medicaid coverage: (1) Pregnant women; (2) qualified children under a specified age; (3) children in adoptions and foster care; (4) certain disabled widows and widowers; and (5) certain disabled children being cared for at home. The rule also adds a condition of eligibility relating to third party liability for medical assistance expenditures. The amendments conform the regulations to certain statutory provisions of the Omnibus Budget Reconciliation Act of 1987, the Consolidated Omnibus Budget Reconciliation Act of 1985, and the Tax Equity and Fiscal Responsibility Act of 1982.

**EFFECTIVE DATE:** These regulations are effective on December 21, 1990. State agencies have until 90 days after receipt of a revised State plan preprint to submit their plan amendments and required attachments. We will not hold a State to be out of compliance with the requirements of these final regulations if the State submits the necessary preprint plan material by that date.

**FOR FURTHER INFORMATION, CONTACT:** Marinos Svolos, (301) 966-4452.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Title XIX of the Social Security Act (the Act) provides authority for States to establish Medicaid programs to provide medical assistance to needy individuals. Section 1902(a)(10) of the Act describes most of the groups of individuals to whom medical assistance may be provided under two broad classifications: The categorically needy (section 1902(a)(10)(A)) and the medically needy (section 1902(a)(10)(C)). The categorically needy classification is further divided into two subgroups: The mandatory categorically needy which, generally, States with Medicaid programs must cover (section 1902(a)(10)(A)(i)); and the optional categorically needy which States, at their option, may cover (section 1902(a)(10)(A)(ii)). Coverage of the medically needy group is also at States' option. In addition, sections 1902(a)(47) and 1902(e) describe special coverage groups dealt with in this rule—newborn children of Medicaid-eligible women, pregnant women eligible during a presumptive period and for an extended postpartum period, certain disabled children being cared for at home, and certain ventilator dependent individuals.

Section 1905 of the Act defines medical assistance and specifies the services that constitute medical assistance. Section 1902(a)(10) (A) and

(C) specify the groups for which certain services are mandatory and certain conditions under which they must be provided. The remaining services are optional. Section 1902(a)(10)(B) contains requirements governing the amount, duration, and scope of services that must be furnished and section 1902(a)(10) (in the material at the end of the section) provides certain exceptions to the requirements that comparable services be provided to certain groups.

Section 1912 of the Act specifies certain conditions of eligibility relating to third party liability that applicants and recipients of Medicaid must meet.

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Public Law 99-272, enacted on April 7, 1986, amended certain provisions of the Social Security Act relating to eligibility and coverage of certain categorically and medically needy groups of individuals. Final regulations that incorporate these two COBRA provisions into the Code of Federal Regulations were published in the *Federal Register* on November 9, 1987 (52 FR 43063). COBRA provided for extended Medicaid coverage of pregnancy-related and postpartum care for women who had been pregnant (section 9501(b) and (c)); changed the eligibility criteria for, and State of residence of, children receiving adoption assistance or foster care maintenance payments (sections 9529 and 12305); provided for Medicaid eligibility for children with special medical or rehabilitative needs who are under State adoption assistance agreements (section 9529) and certain disabled widows and widowers (section 12202); and established a new condition of eligibility for Medicaid applicants and recipients relating to cooperation in identifying and providing information to assist the States in pursuing third parties that may be liable for payments for medical assistance (section 9503).

The Omnibus Budget Reconciliation Act of 1987 (OBRA '87), enacted on December 22, 1987 (Pub. L. 100-203), amended two provisions of the Act that had been included in or amended by COBRA:

- Section 4101(c) of OBRA '87 amended section 1905(n) of the Act, effective October 1, 1988, to expand the definition of qualified children to cover children who have not attained the age of 6 (or any age designated by the State that exceeds 6 but does not exceed 8). Effective October 1, 1989, States must cover qualified children who do not exceed age 7 (or any age designated by the State that exceeds 7 but does not exceed 8).

- Section 4101(e) of OBRA '87 amended section 1902(e)(5) of the Act to provide for extended Medicaid coverage of pregnancy-related and postpartum services for pregnant women through the end of the month in which a 60-day period following termination of pregnancy ends. The 60-day period begins on the last day of pregnancy. Under COBRA, this postpartum period extended only for the 60 days after termination of pregnancy, beginning on the last day of pregnancy. The OBRA '87 provision is effective as if it had been included in the enactment of COBRA—that is, it applies to Medicaid furnished on or after April 7, 1986. (Related amendments made by OBRA '87 concerning coverage of and services to pregnant women, infants, and children with incomes under specified poverty levels are being incorporated into a separate document.)

## II. Proposed Regulations

On February 23, 1989, we published in the *Federal Register*, at 54 FR 7798, a Notice of Proposed Rulemaking to solicit comments on proposed changes to existing Medicaid regulations to incorporate certain statutory provisions of OBRA '87, COBRA, and the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) Pub. L. 97-248. COBRA and OBRA '87 added or amended several eligibility groups of individuals for Medicaid coverage, extended coverage of services to women who had been pregnant, and added a new condition of eligibility relating to third party liability for Medicaid applicants and recipients. TEFRA made amendments (further amended by OBRA '87) regarding Medicaid eligibility of disabled children being cared for at home.

Specifically, COBRA and OBRA '87 amended the various sections of the Social Security Act previously described to—

- Provide for extended eligibility and mandatory Medicaid coverage of pregnancy-related and postpartum services for 60 days after termination of pregnancy for Medicaid-eligible women who had been pregnant (section 9501(c) of COBRA). Section 4101(e) of OBRA '87 extended eligibility for postpartum services to the end of the month in which the 60th day falls.

- Allow States to provide more extensive prenatal care and postpartum services to pregnant women than the covered services that they now provide to other Medicaid-eligible individuals, by providing an exception to the comparability of services requirement contained in section 1902(a)(10) of the Act (section 9501(b) of COBRA).

- Specify that, for purposes of Medicaid eligibility, children who are receiving adoption assistance or foster care maintenance payments under title IV-E of the Act (Federal Payments for Foster Care and Adoption Assistance) are deemed to be AFDC recipients in the State in which they actually reside, rather than the State making the title IV-E payment (sections 9529(a) and 12305 of COBRA).

- Redefine the mandatory qualified children eligibility group to expand the age level from under age 5 to up to age 7 (or up to age 8 at State option) (section 4101(c) of OBRA '87).

- Allow States the option of covering as an optional categorically needy group certain children under age 21 (or at State option, age 30, 19, or 18) with special medical or rehabilitative needs who are adopted under a publicly funded adoption program (other than a program funded under title IV-E) if certain conditions are met (section 9529(b) of COBRA).

- Allow eligible widows and widowers between ages 50 and 59 who were receiving social security disability benefits and who lost SSI eligibility (and consequently Medicaid) because of the January 1984 disability benefit increase under Pub. L. 98-21 to file an application for Medicaid protection with the State Medicaid agency and to be deemed to be receiving SSI benefits for the purpose of Medicaid eligibility (section 12202 of COBRA). OBRA '87 added another provision to allow widows and widowers between ages 60 and 64 who lose SSI eligibility (and consequently Medicaid) because they become entitled to and receive social security disability benefits to be deemed SSI beneficiaries for purposes of Medicaid eligibility (section 9116).

- Add (and further amend) a new section that identifies provisions of the Social Security Act other than title XIX and other laws that make additional individuals eligible for Medicaid and that establish additional requirement for State plans to be approved under Medicaid (section 9526 of COBRA, as redesignated by section 9407(b) of the Omnibus Budget Reconciliation Act of 1986 (OBRA '87), and sections 4118(p)(9), 4211(a)(1), and 9116(d) of OBRA '87). Section 1985(c)(5) of Public Law 99-514, section 6(c) of Public Law 99-643, and section 5(b) of Public Law 100-93 also made changes to this section. Later section 411(k)(6) of the Medicare Catastrophic Coverage Act of 1988 (MCCA) (Pub. L. 100-360) amended section 4112 of OBRA '87 to redesignate this section, and this section was again redesignated by section 303(a)(1) of

MCCA. Then this section was amended by section 608(d)(28) and section 202(c)(5) of the Family Support Act of 1988 (FSA) (Pub. L. 100-485). Most recently, this section was redesignated as section 1927 of the Act by section 6402(b) of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89) (Pub. L. 101-239).

- Add a third condition of eligibility for Medicaid applicants and recipients relating to the collection of medical support and other payments from liable third parties (section 9503 of COBRA).

Section 134 of TEFRA amended section 1902(e) of the Act to give States the option of treating certain children under age 19 who are living at home and who qualify as disabled under section 1614(a) of the Act as SSI recipients or State supplement payment recipients for purposes of Medicaid eligibility. This provision has been in effect since October 1, 1982. Section 1902(e) of the Act was further amended by section 4118(c) of OBRA '87 to replace the condition of the disabled child being eligible for SSI or a State supplement with the condition of the child being eligible for Medicaid.

We proposed to amend the Medicaid regulations under 42 CFR parts 431, 433, 435, 436, 440, and 447 to incorporate the provisions of COBRA, OBRA '87, and TEFRA that are summarized above. The preamble to the Notice of Proposed Rulemaking published on February 23, 1989 provided a detailed discussion of the statutory provisions and the specific amendments to the regulations.

### III. Discussion of Comments

In response to the proposed rule, we received eighteen comments from State and private welfare agencies and professional organizations representing patient and provider interests. Following are specific comments received and our responses.

#### A. Pregnant Women

**Comment**—One commenter requested clarification of the extent of retroactive coverage available to women for whom an application or final determination of eligibility has not been made prior to delivery and whether they qualify for extended eligibility during the 60-day postpartum period.

**Response**—Pregnant women are entitled to the same retroactivity that applies to all other coverage groups. The rules pertaining to retroactive coverage are found in § 435.914, Effective date, and provide for retroactive coverage for up to three months prior to the month of application if certain conditions are met. The rules apply regardless of whether a woman applies before or after delivery.

Consequently, a woman who applies for Medicaid shortly after the delivery could be found eligible retroactively into the prenatal period.

However, to qualify for extended eligibility for the 60-90 day postpartum period addressed in these regulations, a woman must have applied for, been eligible for, and received Medicaid services while pregnant. Thus, if she did not apply for Medicaid until after giving birth, she would not qualify under section 1902(e)(5) for the postpartum coverage. The fact that a State has not made a final determination of eligibility prior to delivery is immaterial as long as the woman applied for and was eligible for Medicaid while pregnant, and received services during her pregnancy for which Medicaid ultimately paid. If she meets these three criteria, she will qualify for the postpartum coverage under section 1902(e)(5), even if Medicaid does not pay for these services until after she has given birth. For the sake of clarity, we note that an application for presumptive eligibility does not meet the criterion of having applied for Medicaid for purposes of the 60-day postpartum period coverage. The woman must file a regular Medicaid application while pregnant to meet this criterion.

**Comment**—One commenter noted that the definition for pregnancy-related services contained in the regulation text of the proposed rule was limited and inconsistent with the definition contained in the preamble. Also, concern was expressed that the definition in the regulation text of the proposed rule appears to only be framed in terms of the threat to the pregnant woman's condition of the carrying of the fetus to full term or safe delivery, at the exclusion of those services necessary to assure the health of the pregnant woman. Also, the commenter suggested that family planning services be included as a pregnancy-related service.

**Response**—We accepted these comments. In the interest of uniformity and clarity, the definition for pregnancy-related services that appeared in the preamble of the proposed rule has been modified to include family planning services and has been included in the regulation text of the final rule. This definition clarifies that pregnancy-related services include those services necessary to assure the health of both the pregnant woman and the fetus.

**Comment**—One commenter expressed the opinion that every service which is provided to a pregnant woman is related to the pregnancy and as such is a "pregnancy-related service."

**Response**—Pregnancy-related services are intended to include not only

services that are needed as a direct result of pregnancy, but problems that if not monitored and/or treated could produce a poor pregnancy outcome. Determinations as to whether services provided during the pregnancy are appropriate; whether postpartum conditions or complications are pregnancy-related; and whether services provided for the treatment of postpartum conditions or complications are appropriate should be based on what is generally accepted by the medical profession. While we believe the coverage provided to pregnant women is intended to be broad and incorporate what is generally accepted by the medical profession, we cannot endorse a policy which suggests that every medical service provided to a pregnant woman is necessarily a "pregnancy-related" service.

#### B. Adoption Assistance

**Comment**—Two commenters had questions regarding adoption assistance agreements established under title IV-E of the Act (Federal Payments for Foster Care and Adoption Assistance), and the Medicaid benefits available to children adopted under such an agreement (title IV-E children). The commenters questioned whether Medicaid eligibility terminates at the age recognized in the State that established the adoption assistance agreement or the State in which the child resides. Also, they were concerned that § 435.403, State residence, indicated that title IV-E children could receive only the Medicaid benefits covered in the State of residence. They questioned the impact of § 435.403(k) which indicates that under an interstate agreement a child can receive the Medicaid benefits of the State of the adoption assistance agreement. They asked whether FFP would still be available to the adoption assistance State for reimbursement made to the State of residence under such an agreement.

**Response**—Under section 9529 of COBRA, title IV-E children are eligible for Medicaid in the State in which they reside. They are eligible only for the benefits available under the State plan of the State in which they reside, and are subject to any age limit applied in the State plan of the State in which they reside.

In the case of a child who is under an adoption assistance agreement in one State and moves to another State, the adoption assistance agreement State remains responsible for providing certain medical services which it specifically agreed to provide in the child's adoption assistance agreement

and which are not available under the State plan in the State of residence. Normally there will be no FFP available for these extra services since they would be outside the scope of coverage provided under the State plan of the State of residence (the State in which the child is currently Medicaid eligible).

There are instances, however, where the adoption assistance State may obtain FFP for the additional services if the services are provided under its State plan, and that State enters into an agreement with the child's State of residence, as described in § 435.403(k). Under this section, States may use interstate agreements "to facilitate the placement and adoption of title IV-E individuals when the child and his or her parent(s) move into another State." Under such an agreement, the State of residence could agree to provide the child's Medicaid services, including the additional services, without claiming FFP. The adoption assistance State could then agree to reimburse the State of residence and claim FFP for all of the services.

We must note, however, that if the services the adoption assistance State agrees to provide are not covered under the State plan in either State, the adoption assistance State would remain contractually obligated to provide them. In this case, neither State could claim FFP.

#### C. Disabled Widows and Widowers

Comment—One commenter said that our explanations in the preamble and body of the regulation regarding the treatment of income conflict with instructional material sent to States. The commenter also said that our treatment of income is not in keeping with the *Darling v. Bowen* court decisions because that decision required section 1902(f) States to consider the individual to have no greater income than the amount which would qualify him or her for SSI benefits. The commenter said that our regulations and instructional material do not provide that income from a source other than monthly Social Security benefits (title II income) be totally disregarded, as the decision seems to require.

Response—After the publication of the proposed rule, the United States Court of Appeals for the Eighth Circuit issued two decisions arising from the *Darling v. Bowen* litigation. In the first, *Darling I*, the appeals court upheld the District Court's order that required section 1902(f) States to treat disabled widows and widowers who are protected by section 1634(b) of the Act and who would have been eligible for SSI except for certain adjustments in

their title II benefits, as if they had no more income than the SSI Federal benefit rate. In the second decision, *Darling II*, the appeals court reversed the District Court decision. The lower court had held that all disabled widows and widowers in section 1902(f) States who are protected by section 1634(b) of the Act must be deemed to have no more than the SSI Federal benefit rate, even if they only qualified under section 1634(b) of the Act because the adjustments in their widow's or widower's benefits caused them to be ineligible for a State supplementary payment (SSP). The appeals court held that these individuals are only deemed to have income at the SSP eligibility level.

In light of these decisions, we have changed the regulation from that published in the proposed rule to conform with the court's orders, as modified by *Darling II*. With the exception of the change made to conform with the recent decision in *Darling II*, the revised regulation is consistent with the instructional material that was sent to the States because of the court's order. We will be sending the States revised instructions to reflect the result in *Darling II*.

We disagree, however, with the commenter's claim that the proposed 42 CFR 435.137(b)(5) is inconsistent with the court's order because it only disregards the amount of the title II increase in widow's or widower's benefits made by Public Law 98-21 and subsequent cost-of-living adjustments. The commenter's claim that not only title II benefits are to be disregarded is not a correct reading of *Darling I* or of section 1634(b) of the Act. The commenter apparently confuses the threshold test for qualifying under section 1634(b) with the treatment section 1902(f) States must accord to individuals who qualify under section 1634(b) (as interpreted by the court). This portion of the regulations addresses only the threshold test.

In determining whether an individual qualifies under section 1634(b), the State must determine whether, if the increase in widow's or widower's benefits and subsequent cost-of-living adjustments were disregarded, the individual would be eligible for SSI or SSP. If the individual meets this test (and the other criteria for section 1634(b) status), the individual is to be deemed to have no more income than an SSI recipient if, except for the increase and subsequent adjustments, he or she would have received SSI. If the individual meets this test (and the other criteria for section 1634(b) status), the individual would be deemed to have no more income than an

SSI recipient if, except for the increase and subsequent adjustments, he or she would have received SSP but would not have also received SSI.

Comment—One commenter said that the regulations are inconsistent with the legislation in that they permit section 1902(f) States to not provide benefits under section 12202 of COBRA, which is contrary to the requirements of the statute as interpreted by two courts. The commenter also said that the regulations ignore the finding of the court. The commenter asked that benefits be provided to the individuals who were the subjects of the *Darling* court case, and that the regulations be changed to reflect the court decision. Finally, the commenter said that by publishing a regulation that was inconsistent with the law, we are abridging the opportunity for proper notice and comment.

Response—As stated in the response to the preceding comment, we have changed the final regulation to conform with both the court's order (as modified by *Darling II*) and the statute as interpreted by the courts. With regard to abridgment of proper notice and comment, we do not believe that we have done so. The Administrative Procedure Act does not preclude us from proposing a rule which, at the time of its publication, we could not enact because of a court order. Since the court order was on appeal, the proposed rule represented the views the agency wished to adopt as final regulations if we had secured relief from the court order.

The preamble to the proposed rule identified the issue of the treatment of individuals covered under section 1634(b) of the Act in section 1902(f) States and explained how we proposed to respond to that issue. This discussion was sufficiently clear to give the public a meaningful opportunity for public comment on that proposal. The preamble also advised the public that if we did not achieve reversal of the District Court's decision, we would publish a final rule that conforms to the court's decisions. Our final rule is a result of these court decisions, of which the public was notified through the proposed rule.

#### D. Conditions of Eligibility

Comment—One commenter questioned the degree of cooperation required of an unmarried pregnant woman in establishing paternity and securing support. The commenter also noted that the proposed rules do not address whether a custodial parent is required to assign his or her child

support payment for collection through the agency authorized to collect such payment under title IV-D of the Act (Child Support and Establishment of Paternity).

**Response**—Section 1912 of the Act requires a pregnant woman, as a condition of eligibility, to cooperate with the State in establishing paternity and securing support on her own behalf and on behalf of any of her children born out of wedlock who are eligible for Medicaid. In the case of the unborn, since an unborn is not considered Medicaid eligible in its own right, a pregnant woman is not required to assign the rights or cooperate in establishing the paternity of the unborn. She is also not required to assign the rights or cooperate in establishing the paternity of the newborn during the 60-90 day postpartum period of extended eligibility. Both the newborn and the mother's eligibility during this period are based on the mother's eligibility as a pregnant woman prior to delivery. As noted above, prior to delivery the woman was not required to assign the rights nor cooperate in establishing the paternity of the unborn.

While we note the commenter's concern that these rules do not specifically address assignment by a pregnant woman of a support payment, rules found elsewhere apply to all Medicaid recipients equally. Therefore, no special rules pertaining to support enforcement for pregnant women are necessary. However, we note that title XIX of the Act and the related regulations address only enforcement of medical support rights and do not address enforcement of other support rights.

#### IV. Final Rule

After consideration of the public comments, and for the reasons stated in our responses to those comments, we have decided to finalize the regulations as proposed, with the following exceptions:

- We are not making the proposed revisions to § 431.52, Payments for services furnished out of State, concerning State plan requirements for individuals receiving assistance under title IV-E. These revisions were made in another document that incorporated several conforming revisions to OBRA '87 (date and FR cite for BPD-484-FC).

- In §§ 435.116(c)(1) and 436.120(c)(1), we are deleting the provision that gives States the option of designating a Medicaid eligibility date earlier than September 30, 1983, for qualified children. Since §§ 435.116(c)(2) and 436.120(c)(2) specify that a State may designate an age for Medicaid eligibility

up to age 8, the option in §§ 435.116(c)(1) and 436.120(c)(1) is no longer applicable.

- We are revising § 435.137(c) to conform its provisions more closely to the Court of Appeals' decisions arising from the *Darling v. Bowen* litigation.

- We are revising § 435.137(e) to specify that individuals in States that use more restrictive eligibility criteria under section 1902(f) of the Act have up to six months after the State sends notice pursuant to the District Court's order in *Darling v. Bowen* to file a written application to obtain protected Medicaid coverage under section 1634(b) of the Act. This revision is being made pursuant to the court's order.

- For editorial clarity and to maintain consistency in the organization of the regulations, we have added a new undesignated center heading after § 435.138 entitled Mandatory Coverage of Special Groups, and have redesignated proposed § 435.118, Pregnant women eligible for extended coverage, as § 435.170.

- We are modifying the definition of pregnancy-related services that appeared in the preamble of the proposed rule to include family planning services and are including the definition in § 440.210(c) of the regulation text of the final rule. We are moving the definition of pregnancy-related services and services for other conditions that might complicate the pregnancy from § 440.250(p)(2), where it appeared in the proposed rule, to § 440.210(c) for consistency in the organization of the regulations. We are also making conforming revisions in §§ 435.170(a), 435.301(b)(iv), 436.122(a), 436.301(b)(iv), and 440.220(e) to reflect these changes.

- We are not making final proposed § 436.225. Our proposal was based on section 1902(e)(3) of the Act and, to the extent that it applies, simply deems the covered individuals to be SSI recipients. This designation is not applicable in Guam, Puerto Rico, and the Virgin Islands, which do not have SSI programs.

#### V. Paperwork Reduction Act of 1980

These regulations do not impose information collection requirements. Consequently, they do not need to be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

#### VI. Impact Analyses

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulation that is likely to meet criteria for a "major rule". A major rule is one that would result in (1) an annual effect on the economy of \$100

million or more; (2) a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we prepare and publish a regulatory flexibility analysis, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) for any regulation that will have a significant impact on a substantial number of small entities. A small entity is a small business, a nonprofit enterprise, or a government jurisdiction (such as a county or township) with a population of less than 50,000.

These regulatory amendments conform the regulations to legislative provisions. The promulgation of these regulations will not result in any increase in expenditures beyond those that have already occurred since these provisions have been implemented.

These regulations, in themselves, do not meet any of the criteria for a major rule. In addition, they primarily affect States and individuals, which are not considered small entities for purposes of the RFA. Therefore, we have determined, and the Secretary certifies, that a regulatory impact analysis and a regulatory flexibility analysis are not required.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 605 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a Metropolitan Statistical Area. We have determined, and the Secretary certifies, that this regulation does not have a significant impact on the operations of a substantial number of small rural hospitals.

#### VII. List of Subjects

42 CFR Part 433

Administrative practice and procedure, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health,

Medicaid, Supplemental Security Income (SSI).

**42 CFR Part 436**

Aid to Families with Dependent Children, Grant programs—health, Guam, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

**42 CFR Part 400**

Grant programs—health, Medicaid.

**42 CFR Part 447**

Accounting, Administrative practice and procedure, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR chapter IV is amended as set forth below:

**PART 433—STATE FISCAL ADMINISTRATION**

A. Part 433 is amended as follows:

1. The authority citation for part 433 continues to read as follows:

Authority: Secs. 1102, 1902(a)(4), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(e), 1903(p), 1903(r), and 1912 of the Social Security Act; 42 U.S.C. 1302, 1396a(a)(4), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), 1396b(r), and 1396k, unless otherwise noted.

2. The table of contents for part 433 is amended by revising the section title of § 433.147 to read as follows:

Sec.

433.147 Cooperation in establishing paternity, obtaining support, and identifying and providing information to assist in pursuing liable third parties.

3. Section 433.137 is amended by revising paragraph (b) and adding a new paragraph (c) to read as follows:

**§ 433.137 State plan requirements.**

(b) A State plan must provide that—

(1) The requirements of §§ 433.145 through 433.148 are met for assignment of rights to benefits, cooperation with the agency in obtaining medical support of payments, and cooperation in identifying and providing information to assist the State in pursuing any liable third parties; and

(2) The requirements of §§ 433.151 through 433.154 are met for cooperative agreements and incentive payments for third party collections.

(c) The requirements of paragraph (b)(1) of this section relating to assignment of rights to benefits and

cooperation in obtaining medical support or payments and paragraph (b)(2) of this section are effective for medical assistance furnished on or after October 1, 1984. The requirements of paragraph (b)(1) of this section relating to cooperation in identifying and providing information to assist the State in pursuing liable third parties are effective for medical assistance furnished on or after July 1, 1986.

4. Section 433.145 is revised to read as follows:

**§ 433.145 Assignment of rights to benefits—State plan requirements.**

(a) A State plan must provide that, as a condition of eligibility, each legally able applicant and recipient must assign his or her rights, or the rights of any other individual eligible under the plan for whom he or she can legally make an assignment, to medical support or other third party payments for medical care to the Medicaid agency, cooperate with the agency in obtaining medical support or payments, and cooperate in identifying and providing information to assist the State in pursuing third parties who may be liable to pay for care and services under the plan.

(b) A State plan must provide that the requirements for assignments, cooperation in establishing paternity and obtaining support, and cooperation in identifying and providing information to assist the State in pursuing any liable third party under §§ 433.146 through 433.148 are met.

(c) A State plan must provide that the assignment of rights to benefits obtained from an applicant or recipient is effective only for services that are reimbursed by Medicaid.

5. Section 433.147 is amended by revising the section title and paragraphs (a), (b)(5), (c), and (d) to read as follows ((b) introducing text is republished):

**§ 433.147 Cooperation in establishing paternity, obtaining support, and identifying and providing information to assist in pursuing liable third parties.**

(a) *Scope of requirement.* The agency must require the individual who assigns his rights to cooperate in—

(1) Establishing paternity of a child born out of wedlock for whom the individual can legally assign rights;

(2) Obtaining medical care support and payments for himself or herself and any other person for whom the individual can legally assign rights; and

(3) Identifying and providing information to assist the State in pursuing any liable third party.

(b) *Essentials of cooperation.* As part of a cooperation, the agency may require an individual to—

(5) Take any other reasonable steps to assist in establishing paternity and securing medical support and payments, and in identifying and providing information to assist the State in pursuing any liable third party.

(c) *Waiver of cooperation for good cause.* The agency must waive the requirements in paragraphs (a) and (b) of this section if it determines that the individual has good cause for refusing to cooperate.

(1) With respect to establishing paternity of a child born out of wedlock or obtaining medical care support and payments, or identifying or providing information to assist the State in pursuing any liable third party for a child for whom the individual can legally assign rights, the agency must find the cooperation is against the best interests of the child, in accordance with factors specified for the Child Support Enforcement Program at 45 CFR part 232. If the State title IV-A agency has made a finding that good cause for refusal to cooperate does or does not exist, the Medicaid agency must adopt that finding as its own for this purpose.

(2) With respect to obtaining medical care support and payments for an individual and identifying and providing information to assist in pursuing liable third parties in any case not covered by paragraph (c)(1) of this section, the agency must find that cooperation is against the best interests of the individual or the person to whom Medicaid is being furnished because it is anticipated that cooperation will result in reprisal against, and cause physical or emotional harm to, the individual or other person.

(d) *Procedures for waiving cooperation.* With respect to establishing paternity, obtaining medical care support and payments, or identifying and providing information to assist the State in pursuing liable third parties for a child for whom the individual can legally assign rights, the agency must use the procedures specified for the Child Support Enforcement Program at 45 CFR part 232. With respect to obtaining medical care support and payments or to identifying and providing information to assist the State in pursuing liable third parties for any other individual, the agency must adopt procedures similar to those specified in 45 CFR part 232, excluding those procedures applicable only to children.

**PART 435—ELIGIBILITY IN THE STATES, THE DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA**

B. Part 435 is amended as follows:

1. The authority citation for part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The table of contents is amended by revising the undesignated heading appearing before § 435.116, redesignating § 435.118, as § 435.119 and adding new §§ 435.137 and 435.138, a new undesignated center heading and § 435.170, and §§ 435.225 and 435.227 to read as follows:

Sec.

**Mandatory Coverage of Pregnant Women, Children under 8, and Newborn Children**

**Mandatory Coverage of Adoption Assistance and Foster Care Children**

435.119 Children for whom adoption assistance or foster care maintenance payments are made.

**Mandatory Coverage of the Aged, Blind, and Disabled**

435.137 Disabled widows and widowers who would be eligible for SSI except for the increase in disability benefits resulting from elimination of the reduction under Pub. L. 98-31.

435.138 Disabled widows and widowers aged 60 through 64 who would be eligible for SSI benefits except for receipt of early social security benefits.

**Mandatory Coverage of Special Groups**

435.170 Pregnant Women eligible for extended coverage.

**Options for Coverage of Families and Children**

435.225 Individuals under age 19 who would be eligible for Medicaid if they were in a medical institution.

435.227 Individuals under age 19 who are under State adoption assistance agreements.

3. In § 435.3, paragraph (a) is republished and several entries are added in numerical order to read as follows:

**§ 435.3 Basis.**

(a) This part implements the following sections of the Act and public laws

which state eligibility requirements and standards:

473(b) Eligibility of children in foster care and adopted children who are deemed AFDC recipients.

1634(b) Preservation of benefit status for disabled widows and widowers who lost SSI benefits because of 1983 changes in actuarial reduction formula.

1634(d) Individuals who lose eligibility for SSI benefits due to entitlement to early widow's or widower's social security disability benefits under section 202(e) or (f) of the Act.

1902(e)(3) Optional coverage of certain disabled children being cared for at home.

1902(e)(5) Eligibility of pregnant woman for extended coverage for specified postpartum period after pregnancy ends.

1912(a) Conditions of eligibility.

4. Section 435.115 is amended by adding a new paragraph (e) to read as follows:

**§ 435.115 Individuals deemed to be receiving AFDC.**

(e) The State must deem to be receiving AFDC individuals described in section 473(a)(1) of the Act—

(1) For whom an adoption assistance agreement is in effect under title IV-E of the Act, whether or not adoption assistance is being provided or an interlocutory or other judicial decree of adoption has been issued; or

(2) For whom foster care maintenance payments are made under title IV-E of the Act.

5. The undesignated heading preceding § 435.116 is revised to read as follows:

**Mandatory Coverage of Pregnant Women, Children under 8, and Newborn Children**

6. Section 435.116 is amended by revising paragraph (c) to read as follows:

**§ 435.116 Qualified pregnant women and children.**

(c) The agency must provide Medicaid to children who meet all of the following criteria:

(1) They are born after September 30, 1983;

(2) Effective October 1, 1988, they are under age 6 (or if designated by the State, any age that exceeds age 6 but does not exceed age 8), and effective October 1, 1989, they are under age 7 (or

if designated by the State, any age that exceeds age 7 but does not exceed age 8); and

(3) They meet the income and resource requirements of the State's approved AFDC plan.

**§ 435.119 [Redesignated from 435.118]**

7. Section 435.118 is redesignated as § 435.119.

8. A new § 435.137 is added to read as follows:

**§ 435.137 Disabled widows and widowers who would be eligible for SSI except for the increase in disability benefits resulting from elimination of the reduction factor under Pub. L. 98-21.**

(a) If the agency provides Medicaid to aged, blind, or disabled individuals receiving SSI or State supplements, the agency must provide Medicaid to disabled widows and widowers who—

(1) Became ineligible for SSI or a mandatory or optional State supplement as a result of the elimination of the additional reduction factor for disabled widows and widowers under age 60 required by section 134 of Pub. L. 98-21, and for purposes of title XIX, are deemed to be title XVI payment recipients under section 1634(b) of the Social Security Act; and

(2) Meet the conditions of paragraphs (b) and (e) of this section.

(b) The individuals must meet the following conditions:

(1) They were entitled to monthly OASDI benefits under title II of the Act for December 1983;

(2) They were entitled to and received widow's or widower's disability benefits under section 202(e) or (f) of the Act for January 1984;

(3) They became ineligible for SSI or a mandatory or optional State supplement in the first month in which the increase under Pub. L. 98-21 was paid (and in which a retroactive payment for that increase for prior months was not made);

(4) They have been continuously entitled to widow's or widower's disability benefits under section 202(e) or (f) from the first month that the increase under Pub. L. 98-21 was received; and

(5) They would be eligible for SSI benefits or a mandatory or optional State supplement if the amount of the increase under Pub. L. 98-21 and subsequent cost-of-living adjustments in widow's or widower's benefits under section 215(i) of the Act were deducted from their income.

(c) If the agency adopts more restrictive requirements than those under SSI, it must provide Medicaid to individuals specified in paragraph (a) of

this section on the same basis as Medicaid is provided to individuals continuing to receive SSI or a mandatory or optional State supplement. The State must consider the individuals specified in paragraph (a) of this section to have no more income than the SSI Federal benefit rate if the individual was eligible for SSI in the month prior to the first month in which the increase under Public Law 98-21 was paid (and in which retroactive payments for that increase for prior months was not being made), and the individual would be eligible for SSI except for the amount of the increase under Public Law 98-21 and subsequent cost-of-living adjustments in his or her widow's or widower's benefits under section 215(i) of the Act. The State must consider individuals who qualify under paragraph (a) of this section on the basis of loss of a mandatory or optional State supplementary payment, rather than the loss of SSI, to have no more income than the relevant SSP rate. If the State's income eligibility level is lower than the SSP or SSI Federal benefit rates, individuals qualifying under paragraph (a) of this section who are deemed to have income at either the SSP rate or the SSI Federal benefit rate may further reduce their countable income by incurring medical expenses in the amount by which their income exceeds the State's income eligibility standard. When the individual has reduced his or her income by this amount, he or she will be eligible for Medicaid as categorically needy.

(d) The agency must notify each individual who may be eligible for Medicaid under this section of his or her potential eligibility, in accordance with instructions issued by the Secretary.

(e)(1) Except as provided in paragraph (e)(2) of this section, the provisions of this section apply only to those individuals who filed a written application for Medicaid on or before June 30, 1988, to obtain protected Medicaid coverage.

(2) Individuals who may be eligible under this section residing in States that use a more restrictive income standard than that of the SSI program, under section 1902(f) of the Act, have up to six months after the State sends notice pursuant to the District Court's order in *Darling v. Bowen* (685 F. Supp. 1125 (W.D.Mo. 1988)) to file a written application to obtain protected Medicaid coverage.

9. A new § 435.138 is added to read as follows:

**§ 435.138 Disabled widows and widowers aged 60 through 64 who would be eligible for SSI except for early receipt of social security benefits.**

(a) If the agency provides Medicaid to aged, blind, or disabled individuals receiving SSI or State supplements, the agency must provide Medicaid to disabled widows and widowers who—

(1) Are at least age 60;

(2) Are not entitled to hospital insurance benefits under Medicare Part A; and

(3) Become ineligible for SSI or a State supplement because of mandatory application (under section 1611(e)(2)) for and receipt of widow's or widower's social security disability benefits under section 202(e) or (f) (or any other provision of section 202 if they are also eligible for benefits under subsections (e) or (f)) of the Act.

For purposes of title XIX, individuals who meet these requirements are deemed to be title XVI payment recipients under section 1634(d) of the Act.

(b) If the agency adopts more restrictive eligibility requirements than those under SSI, it must provide Medicaid to individuals specified in paragraph (a) of this section on the same basis as Medicaid is provided to individuals continuing to receive SSI or a mandatory or optional State supplement. If the individual incurs enough medical expenses to reduce his or her income to the financial eligibility standard for the categorically needy under the State's more restrictive eligibility criteria, the agency must cover the individual as categorically needy. In determining the amount of his or her income, the agency may deduct all, part, or none of the amount of the social security disability benefits that made him or her ineligible for SSI or a State supplement, up to the amount that made him or her ineligible for SSI.

(c) Individuals who may be eligible under this section must file a written application for Medicaid. Medicaid coverage may begin no earlier than July 1, 1988.

(d) The agency must determine whether individuals may be eligible for Medicaid under this section.

10. A new undesignated heading and a new § 435.170 are added after § 435.138 to read as follows:

**Mandatory Coverage of Special Groups**

**§ 435.170 Pregnant women eligible for extended coverage.**

(a) The agency must provide categorically needy Medicaid eligibility for an extended period following termination of pregnancy to women

who, while pregnant, applied for, were eligible for, and received Medicaid services on the day that their pregnancy ends. This period extends from the last day of pregnancy through the end of the month in which a 60-day period, beginning on the last day of the pregnancy, ends. Eligibility must be provided regardless of changes in the woman's financial circumstances that may occur within this extended period. These women are eligible for the extended period for all services under the plan that are pregnancy-related (as defined in § 440.210(c)(1) of this subchapter).

(b) The provisions of paragraph (a) of this section apply to Medicaid furnished on or after April 7, 1986.

11. A new § 435.225 is added to subpart C to read as follows:

**§ 435.225 Individuals under age 19 who would be eligible for Medicaid if they were in a medical institution.**

(a) The agency may provide Medicaid to children 18 years of age or younger who qualify under section 1614(a) of the Act, who would be eligible for Medicaid if they were in a medical institution, and who are receiving, while living at home, medical care that would be provided in a medical institution.

(b) If the agency elects the option provided by paragraph (a) of this section, it must determine, in each case, that the following conditions are met:

(1) The child requires the level of care provided in a hospital, SNF, or ICF.

(2) It is appropriate to provide that level of care outside such an institution.

(3) The estimated Medicaid cost of care outside an institution is no higher than the estimated Medicaid cost of appropriate institutional care.

(c) The agency must specify in its State plan the method by which it determines the cost-effectiveness of caring for disabled children at home.

12. A new § 435.227 is added to Subpart C to read as follows:

**§ 435.227 Individuals under age 21 who are under State adoption assistance agreements.**

(a) The agency may provide Medicaid to individuals under the age of 21 (or, at State option, age 20, 19, or 18)—

(1) For whom an adoption agreement (other than an agreement under title IV-E) between the State and the adoptive parent(s) is in effect;

(2) Who, the State agency responsible for adoption assistance, has determined cannot be placed with adoptive parents without Medicaid because the child has special needs for medical or rehabilitative care; and

(3) Who meet either of the following:  
(i) Were eligible for Medicaid under the State plan before the adoption agreement was entered into; or

(ii) Would have been eligible for Medicaid before the adoption agreement was entered into, if the eligibility standards and methodologies of the title IV-E foster care program were used without employing the threshold title IV-A eligibility determination.

(b) For adoption assistance agreements entered into before April 7, 1986—

(1) The agency must deem the requirements of paragraphs (a)(1) and (2) of this section to be met if the State adoption assistance agency determines that—

(i) At the time of the adoption placement, the child had special needs for medical or rehabilitative care that made the child difficult to place; and

(ii) There is in effect an adoption assistance agreement between the State and the adoptive parent(s).

(2) The agency must deem the requirements of paragraph (a)(3) of this section to be met if the child was found by the State to be eligible for Medicaid before the adoption assistance agreement was entered into.

13. In § 435.301, the introductory texts of paragraphs (b) and (b)(1) are republished and a new paragraph (b)(1)(iv) is added to read as follows:

**§ 435.301 General rules.**

(b) If the agency chooses this option, the following provisions apply:

(1) The agency must provide Medicaid to the following individuals who meet the requirements of paragraph (a) of this section:

(iv) Women who, while pregnant, applied for, were eligible for, and received Medicaid services as medically needy on the day that their pregnancy ends. The agency must provide medically needy eligibility to these women for an extended period following termination of pregnancy. This period extends from the last day of the pregnancy through the end of the month in which a 60-day period, beginning on the last day of pregnancy, ends. Eligibility must be provided, regardless of changes in the woman's financial circumstances that may occur within this extended period. These women are eligible for the extended period for all services under the plan that are pregnancy-related (as defined in § 440.210(c)(1) of this subchapter).

14. Section 435.403 is amended by revising paragraph (g) to read as follows:

**§ 435.403 State residence.**

(g) *Individuals receiving Title IV-E payments.* For individuals of any age who are receiving Federal payments for foster care and adoption assistance under title IV-E of the Social Security Act, the State of residence is the State where the child lives.

15. Section 435.604 is revised to read as follows:

**§ 435.604 Assignment of rights to benefits.**

(a) As a condition of eligibility, the agency must require legally able applicants and recipients to assign rights to medical support or other third party payments to the Medicaid agency, to cooperate with the agency in obtaining medical support or payments, and to cooperate with the agency in identifying and providing information to assist the State in pursuing any third party who may be liable to pay for care and services under the plan. (Part 433, subpart D, contains specific requirements for these assignments.)

(b) The requirements for assignment of rights must be applied uniformly for all groups covered under the plan.

(c) The requirements of paragraph (a) of this section for the assignment of rights to medical support and other payments and cooperation in obtaining medical support and payments are effective for medical assistance furnished on or after October 1, 1984. The requirement for cooperation in identifying and providing information for pursuing liable third parties is effective for medical assistance furnished on or after July 1, 1988.

16. In subpart H, § 435.724 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

**§ 435.724 Financial responsibility of parents for blind or disabled children.**

(a) If the agency provides Medicaid to SSI recipients, it must meet the requirements of this section in determining eligibility of blind and disabled children under the optional coverage of §§ 435.210, 435.211, 435.225, and 435.231.

(d) Under the option provided by § 435.225, the income and resources of the parent or the parent's spouse are not considered available to the disabled child receiving care at home.

17. Section 435.1011 is amended by revising the section title and paragraph (b) to read as follows:

**§ 435.1011 Requirement for maintenance of optional State supplement expenditures.**

(b) FFP in Medicaid expenditures is not available during any period in which the State does not have in effect an agreement with the Secretary under section 1618 of the Act to maintain its supplementary payments.

**PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS**

C. Part 436 is amended as follows:

1. The authority citation for part 436 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. The table of contents is amended by adding a new § 436.122 under subpart B and adding new § 436.224 under subpart C to read as follows:

**Subpart B—Mandatory Coverage of the Categorically Needy**

Sec.

436.122 Pregnant women eligible for extended coverage.

**Subpart C—Options for Coverage as Categorically Needy**

**Options for Coverage of Families and Children**

436.224 Individuals under age 21 who are under State adoption assistance agreements.

3. In § 436.2, paragraph (a) introductory text is republished and new entries are added in numerical order to read as follows:

**§ 436.2 Basis.**

(a) This part implements the following sections of the Act and public laws which state requirements and standards for eligibility:

473(b) Eligibility of children in foster care and adopted children who are deemed AFDC recipients.

1902(e)(3) Optional coverage of certain disabled children at home.

1902(e)(5) Eligibility of pregnant women for extended coverage for a specified period after pregnancy ends.

1912(a) Conditions of eligibility.

4. Section 436.114 is amended by adding a new paragraph (e) to read as follows:

**§ 436.114 Individuals deemed to be receiving AFDC.**

(e) The State must deem to be receiving AFDC individuals described in section 473(a)(1) of the Act—

(1) For whom an adoption assistance agreement is in effect under title IV-E of the Act, whether or not adoption assistance is being provided or an interlocutory or other judicial decree of adoption has been issued; or

(2) For whom foster care maintenance payments are made under title IV-E of the Act.

5. Section 436.120 is amended by revising paragraph (c) to read as follows:

**§ 436.120 Qualified pregnant women and children.**

(c) The agency must provide Medicaid to children who meet all of the following criteria:

(1) They are born after September 30, 1983;

(2) Effective October 1, 1988, they are under age 6 (or if designated by the State, any age that exceeds age 6 but does not exceed age 8), and effective October 1, 1989 they are under age 7 (or if designated by the State, any age that exceeds age 7 but does not exceed age 8); and

(3) They meet the income and resource requirements of the State's approved AFDC plan.

6. A new § 436.122 is added to subpart B to read as follows:

**§ 436.122 Pregnant women eligible for extended coverage.**

(a) The Medicaid agency must provide categorically needy Medicaid eligibility for an extended period following termination of pregnancy to women who, while pregnant, applied for, were eligible for, and received Medicaid services on the day that their pregnancy ends. This period extends from the last day of pregnancy through the end of the month in which a 60-day period, beginning on the last day of the pregnancy, ends. Eligibility must be provided, regardless of changes in the woman's financial circumstances that may occur within this extended period. These pregnant women are eligible for

the extended period for all services under the plan that are pregnancy-related (as defined in § 440.210(c)(1) of this subchapter).

(b) The provisions of paragraph (a) of this section apply to Medicaid furnished on or after April 7, 1986.

7. New § 436.224 is added to subpart C to read as follows:

**§ 436.224 Individuals under age 21 who are under State adoption assistance agreements.**

(a) The agency may provide Medicaid to individuals under the age of 21 (or, at State option, age 20, 19, or 18)—

(1) For whom an adoption agreement (other than an agreement under title IV-E) between the State and adoptive parent(s) is in effect;

(2) Who, the State agency responsible for adoption assistance has determined, cannot be placed with adoptive parents without Medicaid because the child has special needs for medical or rehabilitative care; and

(3) Who meet either of the following:

(i) Were eligible for Medicaid under the State plan before the adoption agreement was entered into; or  
(ii) Would have been eligible for Medicaid before the adoption agreement was entered into, if the eligibility standards and methodologies of the foster care program were used without employing the threshold title IV-A eligibility determination.

(b) For adoption assistance agreements entered into before April 7, 1986—

(1) The agency must deem the requirements of paragraph (a)(1) and (2) of this section to be met if the State adoption assistance agency determines that—

(i) At the time of the adoption placement, the child had special needs for medical or rehabilitative care that made the child difficult to place; and

(ii) There is in effect an adoption assistance agreement between the State and the adoptive parent(s).

(2) The agency must deem the requirements of paragraph (a)(3) of this section to be met if the child was found by the State to be eligible for Medicaid before the adoption assistance agreement was entered into.

8. In § 436.301, the introductory texts of paragraphs (b) and (b)(1) are republished and a new paragraph (b)(1)(iv) is added to read as follows:

**§ 436.301 General rules.**

(b) If the agency chooses this option, the following provisions apply:

(1) The agency must provide Medicaid to the following individuals who meet

the requirements of paragraph (a) of this section:

(iv) Women who, while pregnant, applied for, were eligible for, and received Medicaid services as medically needed on the day that their pregnancy ends. The agency must provide medically needy eligibility to these women for an extended period following termination of pregnancy. This period begins on the last day of the pregnancy and extends through the end of the month in which a 60-day period following termination of pregnancy ends. Eligibility must be provided, regardless of changes in the women's financial circumstances that may occur within this extended period. These women are eligible for the extended period for all services under the plan that are pregnancy-related (as defined in § 440.210(c)(1) of this subchapter).

9. Section 436.403 is amended by revising paragraph (f) to read as follows:

**§ 436.403 State residence.**

(f) *Individuals receiving title IV-E payments.* For individuals of any age who are receiving Federal payment for foster care and adoption assistance under title IV-E of the Social Security Act, the State of residence is the State where the child lives.

10. Section 436.604 is revised to read as follows:

**§ 436.604 Assignment of rights to benefits.**

(a) As a condition of eligibility, the agency must require legally able applicants and recipients to assign rights to medical support and other third party payments to the Medicaid agency, to cooperate with the agency in obtaining medical support or payments, and to cooperate with the agency in identifying and providing information to assist the State in pursuing any liable third party. (Part 433, subpart D), contains specific requirements for these assignments.)

(b) The requirements for assignment of rights must be applied uniformly for all groups covered under the plan.

(c) The requirements of paragraph (a) of this section for assignment of rights to medical support and other payments and cooperation in obtaining medical support and payments are effective for medical assistance furnished on or after October 1, 1984. The requirement for cooperation in identifying and providing information for pursuing liable third parties are effective for medical

assistance furnished on or after July 1, 1986.

#### **PART 440—SERVICES; GENERAL PROVISIONS**

D. Part 440 is amended as follows:

1. The authority citation for part 440 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 440.165 is amended by revising paragraph (c) to read as follows:

##### **§ 440.165 Nurse-midwife services.**

(c) "Maternity cycle" means a period limited to—

- (1) Pregnancy;
- (2) Labor;
- (3) Birth; and

(4) The immediate postpartum period which begins on the last day of pregnancy and extends through the end of the month in which the 60-day period following termination of pregnancy ends.

3. Section 440.210 is revised to read as follows:

##### **§ 440.210 Required services for the categorically needy.**

A State plan must specify that, as a minimum, categorically needy recipients are provided—

(a) The services as specified in §§ 440.10 through 440.50 and § 440.70;

(b) To the extent nurse-midwives are authorized to practice under State law or regulations, services specified in § 440.165;

(c) Pregnancy-related services and services for other conditions that might complicate the pregnancy.

(1) Pregnancy-related services are those services that are necessary for the health of the pregnant woman and fetus, or that have become necessary as a result of the woman having been pregnant. These include, but are not limited to, prenatal care, delivery, postpartum care, and family planning services.

(2) Services for other conditions that might complicate the pregnancy include those for diagnoses, illnesses, or medical conditions which might threaten the carrying of the fetus to full term or the safe delivery of the fetus; and

(d) For women who, while pregnant, applied for, were eligible for, and received Medicaid services under the plan, all services under the plan that are pregnancy-related for an extended postpartum period. The postpartum period begins on the last day of pregnancy and extends through the end of the month in which the 60-day period

following termination of pregnancy ends.

4. In § 440.220, the introductory paragraph is republished and a new paragraph (e) is added to read as follows:

##### **§ 440.220 Required services for the medically needy.**

A State plan that includes the medically needy must specify that the medically needy are provided, as a minimum, the following services:

(e) For women who, while pregnant, applied for, were eligible as medically needy for, and received Medicaid services under the plan, services under the plan that are pregnancy-related (as defined in § 440.210(c)(1) of this subpart) for an extended postpartum period. The postpartum period begins on the last day of pregnancy and extends through the end of the month in which the 60-day period following termination of pregnancy ends.

5. Section 440.250 is amended by adding a new paragraph (p) to read as follows:

##### **§ 440.250 Limits on comparability of services.**

(p) A State may provide a greater amount, duration, or scope of services to pregnant women than it provides under its plan to other individuals who are eligible for Medicaid, under the following conditions:

(1) These services must be pregnancy related or related to any other condition which may complicate pregnancy, as defined in § 440.210(c) of this subpart; and

(2) These services must be provided in equal amount, duration, and scope to all pregnant women covered under the State plan.

#### **PART 447—PAYMENTS FOR SERVICES**

E. Part 447 is amended as follows:

1. The authority citation for part 447 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. Section 447.53 is amended by revising paragraphs (b) introductory text and (b)(2) to read as follows:

##### **§ 447.53 Applicability; specifications; multiple charges.**

(b) *Exclusions from cost sharing.* The plan may not provide for impositions of a deductible, coinsurance, copayment, or similar charge upon categorically or medically needy individuals (except as

specified in paragraph (b)(6) of this section) for the following:

(2) *Pregnant women.* Services furnished to pregnant women if such services related to the pregnancy, or to any other medical condition which may complicate the pregnancy are excluded from cost sharing obligations. These services include routine prenatal care, labor and delivery, routine post-partum care family planning services, complications of pregnancy or delivery likely to affect the pregnancy, such as hypertension, diabetes, urinary tract infection, and services furnished during the postpartum period for conditions or complications related to the pregnancy. The postpartum period is the immediate postpartum period which begins on the last day of pregnancy and extends through the end of the month in which the 60-day period following termination of pregnancy ends. States may further exclude from cost sharing all services furnished to pregnant women if they desire.

(Catalog of Federal Domestic Assistance Program No. 13.714—Medical Assistance Program)

Dated: June 29, 1990.

Gail R. Wilensky,  
*Administrator, Health Care Financing Administration.*

Approved: September 13, 1990.

Louis W. Sullivan,  
*Secretary.*

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#### **FEDERAL EMERGENCY MANAGEMENT AGENCY**

##### **Federal Insurance Administration**

##### **44 CFR Part 67**

##### **Final Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Final rule.

**SUMMARY:** Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**EFFECTIVE DATE:** The date of issuance of the Flood Insurance Rate Map (FIRM)